

CONTRACT #11
RFS # 318.66-050

**Department of Finance &
Administration/Bureau
of TennCare**

VENDOR:
**Tennessee Behavioral Health,
Inc. (East Grand Region)**

REQUEST: NON-COMPETITIVE AMENDMENT

RECEIVED

JUN 20 2005

FISCAL REVIEW

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

| | | | |
|--|--|----------------------|---|
| RFS # | 318.66-050 | | |
| STATE AGENCY NAME | Department of Finance and Administration Bureau of TennCare | | |
| SERVICE CAPTION | Behavioral Health Organizations Providing Medically Necessary Behavioral Services to the TennCare/Medicaid Population in Tennessee East Grand Region | | |
| CONTRACT # | FA-05-16089-00 | PROPOSED AMENDMENT # | 2 |
| CONTRACTOR | Tennessee Behavioral Health, Inc. | | |
| CONTRACT START DATE | 07/01/2004 | | |
| CURRENT LATEST POSSIBLE END DATE (including ALL options to extend) | 12/31/2005 | | |
| CURRENT MAXIMUM LIABILITY | \$254,586,310.00 | | |
| LATEST POSSIBLE END DATE WITH PROPOSED AMENDMENT (including ALL options to extend) | 12/31/2005 | | |
| TOTAL MAXIMUM COST WITH PROPOSED AMENDMENT (including ALL options to extend) | \$254,586,310.00 | | |
| APPROVAL CRITERIA (select one) | <input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service | | |
| ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text) | | | |
| (1) description of the proposed additional service and amendment effects | | | |
| This amendment removes responsibility for methadone treatment for adults as well as establishes payments rates which will go beyond June 30, 2005. Additionally, new language has been included that provides for new Conflict of Interests, including attached form for BHO to complete, new Offer of Gratuities language, and stricter Lobbying language. The liquidated damages section has been amended to reflect requirements of new sections. | | | |

(2) explanation of need for the proposed amendment :

This amendment is needed in order to establish payment mechanisms for period beyond June 30, 2005 . Additionally methadone services for adults has been removed.

(3) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Dr. Russ Petrella, Chief Operating Officer
Magellan Behavioral Health
199 Pomeroy Road, 3rd Floor
Parsippany, New Jersey 07054

(4) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one



Documentation Not Applicable to this Request



Documentation Attached to this Request

(5) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one



Documentation Not Applicable to this Request



Documentation Attached to this Request

(6) description of procuring agency efforts to identify reasonable competitive procurement alternatives rather than to use non-competitive negotiation

This contract for Behavioral Health Services for the State has been in effect since 2001. This amendment to the existing contract will ensure that services to recipients will continue without interruption and that payment rates are established for period beyond June 30, 2005.

(7) justification of why the F&A Commissioner should approve a Non-Competitive Amendment

The approval of this amendment by F&A will ensure the best interests of TennCare enrollees will be served. Based on the network of providers that Premier Behavioral Health Systems currently has, TennCare is confident that the modifications of this agreement will prevent any disruption of services to enrollees.

AGENCY HEAD REQUEST SIGNATURE

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE DATE



KAW

CONTRACT SUMMARY SHEET

| | | | |
|-----------------------------------|--|--|----------------|
| RFS Number: | 318.66-050 | Contract Number: | FA-05-16089-02 |
| State/Agency: | Department of Finance and Administration | Division: | TennCare |
| Contractor: | | Contractor Identification Number: | |
| Tennessee Behavioral Health, Inc. | | X | V- |
| | | | C- |
| | | 621621 636 01 | |

Service Description

Behavioral Health Services to Enrollees in the TennCare Partners Program in Tennessee East Grand Region

| | | | | | | | |
|----------------------------|--------------------|----------------------|--------------------------------|--------------------------|---|----------------------|--|
| Contract Begin Date | | | | Contract End Date | | | |
| 7/1/2004 | | | | 12/31/2005 | | | |
| Allotment Code | Cost Center | Object Code | Fund | Grant | Grant Code | Subgrant Code | |
| 318.66 | 133 | 134 | 11 | on STARS | | | |
| FY | State Funds | Federal Funds | Interdepartmental Funds | Other Funding | Total Contract Amount Include ALL Amendments | | |
| 2005 | \$59,243,280.00 | \$108,632,276.00 | | | \$167,875,556.00 | | |
| 2006 | \$30,602,400.00 | \$56,108,354.00 | | | \$86,710,754.00 | | |
| | | | | | | | |
| | | | | | \$0.00 | | |
| | | | | | \$0.00 | | |
| Total | \$89,845,680.00 | \$164,740,630.00 | \$0.00 | \$0.00 | \$254,586,310.00 | | |

| | | | |
|--|--|--|---|
| CFDA Number: | 93.778 Department of Health and Human Services | Check the box (below) ONLY if the answer is YES: | |
| State Fiscal Contact | | Is the Contractor a SUBRECIPIENT? (per OMB A-133) | X |
| Name: | Scott Pierce | Is the Contractor a VENDOR? (per OMB A-133) | |
| Address: | 729 Church Street Nashville, TN | Is the Fiscal Year Funding STRICTLY LIMITED? | |
| Phone: | 615-532-1362 | Is the Contractor on STARS? | |
| Procuring Agency Budget Officer Signature | | Is the Contractor's FORM W-9 ATTACHED? | |
| | | Is the Contractor's Form W-9 Filed with Accounts? | |

COMPLETE FOR ALL AMENDMENTS (only)

| | | |
|-----------------|---|----------------------------|
| | Base Contract & Prior Amendments | This Amendment ONLY |
| End Date | 12/31/2005 | |
| FY | 2005 | \$167,875,556.00 |
| FY | 2006 | \$86,710,754.00 |
| FY | | \$0.00 |
| FY | | |
| FY | | |
| FY | | |
| Totals | \$254,586,310.00 | \$0.00 |

Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

**AMENDMENT NUMBER 2
to Contract Number FA-05-16089-00**

PROVIDER RISK CONTRACT

BETWEEN

**THE STATE OF TENNESSEE DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES**

AND

**TENNESSEE BEHAVIORAL HEALTH, INC.
IN THE EAST TENNESSEE GRAND REGIONS**

For and in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to clarify and/or amend the Provider Risk Agreement by and between the State of Tennessee Department of Mental Health and Developmental Disabilities, hereinafter referred to as **TDMHDD**, and Tennessee Behavioral Health, Inc. hereinafter referred to as the **Contractor**, as follows:

1. Delete Table 1, Covered Behavioral Health Benefits, in Section 2.5.1.4 in its entirety and replace with the following:

Table 1: Covered Behavioral Health Benefits

| <i>Benefit</i> | <i>TennCare Medicaid, State-Only & Standard Coverage</i> |
|--|---|
| Psychiatric Inpatient Hospital Services (including physician services) | As medically necessary |
| Outpatient Mental Health Services (including physician services) | As medically necessary |
| Inpatient/Residential & Outpatient Substance Abuse Benefits¹ | Under age 21: As medically necessary Includes methadone clinic services. Age 21 & older, including SPMI: Limited to ten days detox, \$30,000 in medically necessary lifetime benefits. Does not include Methadone clinic services. |

| | |
|--|--|
| 24-hour Psychiatric Residential Treatment² | As medically necessary |
| Mental Health Crisis Services | As necessary for anyone regardless of TennCare eligibility |
| Mental Health Case Management | As medically necessary |
| Non-Emergency Transportation | As necessary to get the Enrollee to and from covered services for Enrollees lacking access to transportation |
| Emergency Air & Ground Ambulance Services | As medically necessary |
| Laboratory Services | As medically necessary |
| Psychiatric-Rehabilitation Services | As medically necessary |

2. Section 2.6.6 shall be deleted in its entirety and replace with the following:

The responsibility for payment of medically necessary covered behavioral health services is not dependent upon the existence or absence of a specific diagnosis of the enrollee for whom the service is requested. The Contractor is responsible for providing all medically necessary covered behavioral health and substance abuse services as delineated in this Agreement or as required by state or federal law.

3. Add the following new language as Section 2.7:

2.7 Effective August 1, 2005, Methadone clinic services are not covered for adults age 21 and older.

4. Section 4.7.1 shall be amended by adding the following language at the end of the paragraph:

For the period of July 1, 2005 forward, the maximum liability of the State for the TennCare Partners Program shall be \$13,989,630.00 per month until the actuarial funding level is determined by TennCare. TennCare and the Contractor agree that the funding level and rates may be adjusted with a July 1, 2005 effective date if required by the actuarial determination. This will include any adjustments necessary for changes in benefits.

5. Section 4.7.2. shall be amended by deleting the third sentence in the first paragraph and replace with the following:

The Rates in Table 1 shall be applicable from July 1, 2004 through June 30, 2005. After June 30, 2005, the rates will be used until the actuarial funding level is determined by TennCare. TennCare and the Contractor agree that the funding level and rates may be adjusted with a July 1, 2005 effective date if required by the actuarial determination, including any adjustments necessary for changes in benefits.

6. Delete Section 6.5 in its entirety and replace with the following:

6.5. Conflicts of Interest

The CONTRACTOR warrants that during the term of this Agreement no payments shall be paid to the following:

- (1) any State or federal officer, including but not limited to
 - a. a member of the State Legislature, or
 - b. a member of Congress, or
 - c. any immediate family member of any State or federal officer; or
- (2) any State or federal employee or any immediate family member of a State or federal employee unless otherwise authorized by the Commissioner, Tennessee Department of Finance and Administration. Immediate family members may be exempted if State or federal officer or employee discloses such relationship to TENNCARE, TDMHDD and the TennCare Oversight Committee. The applicability of this section includes, but is not limited to, any and all arrangements and/or agreements, written or verbal, that result in the CONTRACTOR making a payment or providing a gift in exchange for services or supplies.

The CONTRACTOR must certify annually by filing a TennCare Disclosure of Lobbying Activities Form (Attachment II) with TENNCARE, TDMHDD and the TennCare Oversight Committee that the CONTRACTOR is in compliance with all state and federal laws relating to conflicts of interest and lobbying, having made diligent inquiry of all subcontractors and/or persons receiving payment or gifts from CONTRACTOR pursuant to this Agreement. This form must be signed by the Chief Executive Officer of the CONTRACTOR or his/her designee and must be received by TDMHDD and TENNCARE and the TennCare Oversight Committee no later than December 31 of each year beginning with December 31, 2005. The certification must include any and all subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the CONTRACTOR which receive reimbursement through this Agreement from the CONTRACTOR. The Chief Executive Officer acknowledges that he/she is responsible for ensuring that internal controls are in place to prevent and detect potential conflicts of interest and that due diligence was performed before providing certification of compliance. Any changes by the CONTRACTOR relating to the disclosure of conflicts of interest or lobbying must be disclosed to TDMHDD and TENNCARE within five (5) business days of the date of the change. (See Section 6.7 for definitions of lobbying activities)

This Agreement may be terminated by TDMHDD if it is determined that the CONTRACTOR, its agents or employees offered or gave gratuities of any kind to any official, employee or immediate family member of an employee of the State of Tennessee, including a member of the State legislature. This Agreement may be terminated by TDMHDD if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the CONTRACTOR, his agent, or employees.

Failure to comply with the provisions required herein shall result in liquidated damages in the amount of one-hundred ten percent (110%) of the total amount of compensation that was paid inappropriately and may be considered a breach of this Agreement as described in Section 5.1. and subject to termination of this Agreement.

The CONTRACTOR shall be responsible for maintaining adequate internal controls to detect and prevent conflicts of interest from occurring at all levels of the organization and include the substance of this clause in all agreements, subcontracts, provider agreements, and any and all agreements that result from this Agreement between CONTRACTOR and TDMHDD and TENNCARE.

7. Add the following new language to Section 6:

6.6. Offer of Gratuities

By signing this Agreement, the CONTRACTOR signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, CMS, or any other federal agency has or will benefit financially or materially from this procurement. This Agreement may be terminated by TDMHDD if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the CONTRACTOR, his agent, or employees and may result in termination of the Agreement and/or liquidated damages as provided in Section 5.3.3.2 of this Agreement.

6.7. Lobbying

A. Definitions

(1) Lobbying means to communicate, directly or indirectly, with any official in the legislative or executive branch, for pay or for any consideration, for the purpose of influencing any legislative action or administrative action. (T.C.A. § 3-6-102(13))

(2) Public Official means any elected official, appointed official, or employee of:

(a) A federal, State or local unit of government in the U.S.

- (b) A government corporation. (2 U.S.C.A. § 1602(15)(A) and (B))
- (3) Official in the Executive Branch means the governor, any member or the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee regulatory authority, or any member or employee of any executive department or agency or other state body in the executive branch. (T.C.A. § 3-6-102(16))
- (4) Official in the Legislative Branch means any member, member-elect, any staff person or employee of the General Assembly or any member of a commission established by and responsible to the General Assembly or either house thereof who takes legislative action. This includes the Secretary or State, Treasurer, and Comptroller of the Treasury and any employee of such offices. (T.C.A. § 3-6-102(17))

B. The CONTRACTOR further certifies by signing this Agreement, to the best of its knowledge and belief, that Federal funds have not been used for lobbying in accordance with 45 CFR 93.100 and 31 U.S.C.A. 1352. Regardless of funding source, lobbyist compensation cannot be directly or indirectly contingent on 1) the passage or defeat of a bill related to TennCare or sister health departments, 2) the number of covered TENNCARE enrollee and/or TennCare Partners Program, 3) or the amount of TDMHDD or TENNCARE reimbursement to a vendor. Certification from the CONTRACTOR must include the following:

- (1) No appropriated funds may be expended by the recipient of this Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, an elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, CMS or any other federal agency in connection with this Agreement or subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the CONTRACTOR which receive reimbursement through this Agreement from the CONTRACTOR.
- (2) The CONTRACTOR must certify annually by filing a TennCare Disclosure of Lobbying Activities Form (Attachment H) with TENNCARE, TDMHDD and the TennCare Oversight Committee that the CONTRACTOR is in compliance with all state and federal laws relating to conflicts of interest and lobbying. This form must be signed by the Chief Executive Officer of the CONTRACTOR or his/her designee and must be received by TENNCARE, TDMHDD

and the TennCare Oversight Committee no later than December 31 of each year beginning with December 31, 2005. The certification must include any and all subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the CONTRACTOR which receive reimbursement through this Agreement from the CONTRACTOR. The certification must also include signed copies of any contracts or agreements as well as a list of individual entities who have been lobbied or influenced.

Failure by the Contractor to comply with the provisions herein shall result in termination of the Contract and/or liquidated damages as provided in 5.3.3.2 (5.3.3.2.31, 5.3.3.2.32, and 5.3.3.2.33) of this Agreement.

8. Amend Section 5.3.3.2 by adding new liquidated damages which shall read as follows:

| | | |
|-------------------|---|--|
| 5.3.3.2.31 | Failure to comply with Conflicts of Interest, Lobbying, and Gratuities requirements described in Sections 6.5, 6.6, or 6.7. | 110% of the total amount of the compensation paid by the CONTRACTOR to inappropriate individuals as described in Sections 6.5, 6.6, or 6.7 and possible termination of the Agreement as described in Sections 6.5, 6.6, and 6.7. |
| 5.3.3.2.32 | Failure to submit TennCare and TDMHDD Disclosure of Lobbying Activities Form by CONTRACTOR. | \$1000.00 per day that form late. |
| 5.3.3.2.33 | Failure to comply with Offer of Gratuities constraints described in Section 6.6. | 110% of the total benefit provided by the CONTRACTOR to inappropriate individuals and possible termination of the Agreement for Breach as described in Section 6.6 of this Agreement. |

9. Amend Attachment B, **Covered Mental Health and Substance Services**, by deleting under **Intervention/Therapy**, Medication, in its entirety and replace with the following:

Medication (Chemotherapy Except for Detoxification Purposes)
Treatment provided through the use of medications.

All of the provisions of the original Agreement not specifically deleted or modified herein shall remain in full force and effect. Unless a provision contained in this Amendment specifically indicates a different effective date, for purposes of the provisions contained herein, this Amendment shall become effective, or as of the date it is approved by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

IN WITNESS WHEREOF, the parties have by there duly authorized representatives set their signature.

Russell C. Petrella, Ph.D.
Vice-President
Tennessee Behavioral Health, Inc.

DATE

TENNESSEE DEPARTMENT OF MENTAL
HEALTH AND DEVELOPMENTAL DISABILITIES

Virginia Trotter Betts, MSN, JD, RN, FAAN
Commissioner

DATE

TENNESSEE DEPARTMENT OF
FINANCE AND ADMINISTRATION:

M.D. Goetz, Jr.
Commissioner

DATE

APPROVED:

TENNESSEE DEPARTMENT OF
FINANCE AND ADMINISTRATION:

M.D. Goetz, Jr.
Commissioner

DATE

COMPTROLLER OF TREASURY:

John G. Morgan
Comptroller of Treasury

DATE


ATTACHMENT H

INSTRUCTIONS FOR COMPLETION OF LOBBYING DISCLOSURE FORM FOR THE BUREAU OF TENNCARE AND TDMHDD

This disclosure form shall be filed with TennCare, TDMHDD and the TennCare Oversight Committee annually by the reporting entity no later than December 31 of each year, beginning on December 31, 2005; however an ongoing duty exists to amend and update all filings. All TennCare-related or TennCare Partners Program-related lobbying relationships and/or contracts should be disclosed on a separate form. Disclosure is required if any portion of funds received under a contract, grant or other relationship with TennCare or TDMHDD was paid to a lobbyist or lobbying entity as defined by Tenn. Code Ann. 3-6-102 and as further defined in Section 6.7 of the Agreement. For those Contractors reliant on TennCare or the TennCare Partners Program for greater than two-thirds of their total revenue in the previous fiscal year, all lobbying contracts will be presumed to be TennCare-related or TennCare Partners Program-related. This form has been designed consistent with federal regulations, 31 U.S.C. 1352 and 42 CFR 93.100. Refer to the implementing guidance provided by the Federal Office of Management and Budget for additional information.

1. Identify the type of lobbying relationship being disclosed (*e.g. ongoing, one-time*). Use a separate form for each lobbyist contract or relationship.
2. Identify the purpose of the lobbying relationship as quoted in the contractual agreement.
3. Identify the appropriate classification of this disclosure. Any material change to information previously reported should be disclosed in an amended form within five (5) business days.
4. Enter the full name, address, city, state and zip code of the reporting entity.
5. Enter the total reimbursement paid to lobbyist in the previous fiscal year.
6. Enter the full name, job title, address, city, state and zip code of the lobbying registrant engaged by the reporting entity identified in item 4.
7. Enter the full name(s) of the individual(s) performing services and include full address if different from item 6. Enter last name, first name, middle initial (MI), and job title.
8. Enter the full name(s), job title(s) of individuals lobbied, the subject matter of the lobbying activity(ies) and the total value of all gifts/remuneration received. (See Tenn.Code Ann. 3-6-102 and Section 4-12 of the CRA for a definition of relevant lobbying activities)
9. The certifying contractor or vendor Chief Executive Officer shall sign and date the affirmation, print his/her name, title, and telephone number.

ATTACHMENT H

| | | |
|--|--|--|
| <h3 style="margin: 0;">LOBBYING DISCLOSURE</h3> <p style="margin: 5px 0;">Complete this form to disclose TennCare-related or TennCare Partners Program-related* lobbying relationships entered into or existing in the previous fiscal year. Each lobbying relationship/contract requires a separate form.</p> | |  State of Tennessee Bureau of TennCare |
| 1. Type of Relationship: <i>(e.g., ongoing, one-time)</i> | 2. Stated Purpose of the Relationship: | 3. Report Type: a. Initial Filing b. Material Change For Material Change Only: Year _____ Quarter _____ Date of last Report _____ |
| 4. Name and Address of Reporting Entity: | 5. Total Reimbursement Paid to Lobbyist: \$ _____ | |
| 6. Name and Address of Lobbying Registrant: <i>(If individual, last name, first name, MI)</i> | 7. Individuals Performing Services: <i>(Including address if different from No. 6)</i> | |
| 8. List of Individuals Lobbied: <i>(Including name, job title, subject matter of lobbying activity(ies) and total value of all gifts/remuneration received)</i> | | |
| 9. "I hereby affirm that to the best of my knowledge my organization and its sub-contractors remain in compliance with state contractual requirements barring payment to state officials." Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ | | |

* Disclosure is required if any portion of a lobbying relationship relates to TennCare or TennCare Partners Program. For those CONTRACTORS reliant on TennCare or TDMHDD for greater than two-thirds of their total revenue in the previous fiscal year, all lobbying contracts will be presumed to be TennCare-related or TennCare Partners Program-related.

** Attach additional sheets if necessary. Include the name of the Reporting Entity and date on each additional sheet.